IN THE HIGH COURT OF JUDICATURE AT MADRAS

Dated: 10/01/2003

Coram

The Hon'ble Mr. Justice P. SATHASIVAM
and
The Hon'ble Mr. Justice A.K. RAJAN

Civil Miscellaneous Appeal No. 1046 of 1996

M/s. United India Insurance
Company Limited,
Tiruchirapalli. ..2nd respondent/Appellant.

-Vs-

1. Minor R. Baskar,S/o
V. Ramalingam, represented by
next friend and guardian
V. Ramalingam.
..Petitioner.
2. M/s. Lakshmi Timber
Traders, Trichy. ..1st Respondent/Respondents.

Appeal under Section 173 of the Motor Vehicles Act, 198 8, against the Judgment and Decree dated 25-03-1996 and made in M.C. O.P.No. 102 of 1993 on the file of the Motor Accidents Claims Tribunal (II Additional District Judge), Tiruchirapalli.

!For Appellant ..... Mrs. N.B. Surekha

^For 1st Respndent ..... Mr. A. Saravanan

Mr. P. Velliappan:- For 2nd respondent.

:JUDGMENT

(Judgment of the Court was made by P. Sathasivam, J.)

Messers. United India Insurance Company, Tiruchirapalli, aggrieved by the award of the Motor Accidents Claims Tribunal (Second Additional District Judge), Tiruchirapalli dated 25-03-96, made in M.C.O.P.No. 102 of 1993, has preferred the above appeal.

2. In respect of injuries sustained in a motor accident that took place on 17-8-92, the minor first respondent herein has prayed for a compensation of

Rs.1,00,000/-. Before the Tribunal, the father and guardian of the injured claimant was examined as P.W.1 and one Dr.Md. Nizamuddin as P.W.2 and also produced and marked Exs. A-1 to A-4 in support of his claim for compensation. On the side of the respondents, 3 witnesses were examined as R.Ws.1 to 3 and Exs. B-1 to B-13 were marked in support of their defence. The Tribunal, after holding that the accident was caused due to rash and negligent act of the driver of the motor cycle, passed an award for Rs.25,000/- with interest at 12 per cent from the date of petition till date of realisation and directed the United India Insurance company (appellant herein) to pay the said amount. Questioning the said award, the Insurance company has preferred the above appeal.

3. Heard the learned counsel for the appellant as well as respondents.

4. Mrs. N.B. Surekha, learned counsel appearing for the appellant/Insurance company, after taking us through the materials placed before the Tribunal and the ultimate decision taken by it, would contend that inasmuch as the rider of the motor cycle Hero Honda T.N.45/A 4686 was not having a valid driving licence, the award of the Tribunal and also the direction to the insurance company to pay the award amount cannot be sustained. On the other hand, learned counsel appearing for the second respondent, would contend that since the motor cycle had been sold in favour of one Ravi, in the absnce of the owner and the rider of the motor cycle, the claim petition itself is not maintainable and, in any vent, the award passed against them with a direction to the insurance company to pay the same cannot be sustained.

5. It is seen from the materials that the minor claimant R. Baskar, aged about 8 years sustained injuries in a road accident on 17-8-92 at about 6.30 A.M. at Uyyakondan Thirumalai. It is further seen that the rider of the Hero Honda motor cycle bearing registration No. T.N.45-A 4686 drove the same in a rash and negligent manner and dashed against the boy, due to which the minor boy sustained various injuries. The second respondent herein has been impleaded as first respondent before the Tribunal. It is stated in the written statement filed by them before the Tribunal, that they had sold and delivered the motor cycle to one D. Balan, 36/4, Sastri Road, Thillai Nagar, Trichy-18. It is further stated that at the time of sale, the insurance policy obtained by them with the 2nd respondent therein, which was valid from 29-5-92 to 28-5-93, was in force, accordingly, in any event, the second respondent Insurance company alone is liable to make good the loss. The Insurance Company in their additional written statement has stated that the driver of the motor cycle was prosecuted under Sections 279, 337 and 338 of Indian Penal Code, read with Section 3(1) of the Motor Vehicles Act, 1988 and the driver has also paid the fine amount. It is further stated that this will clearly indicate that the person who drove the vehicle had no valid and effective licence, and in such a circumstance, the insurance company is not liable to pay any compensation to the claimant. In support of the above plea, the insurance company has examined an Assistant working in the Office of the Regional Transport Officer, Trichy as R.W.1. He deposed before the Court that the motor cycle TN-45A 4686 originally stood in the name of Lakshmi Timber

Traders, No.86, Madurai Road, Trichy and that thereafter on 7-9-92, the ownership of the vehicle was transferred in the name of one T. Ravi, son of Dhanapal, 1/A1, Thuraiyur Road, Mannachanallur. It is clear from the evidence of R.W.1 that on the date of the accident, i.e., 17-8-92 M/s. Lakshmi Timber Traders were the owners of the motor cycle. One S. Soundararajan, Branch Assistant of the Insurance company was examined as R.W.2. He deposed before the Court that the motor cycle was insured with their insurance company for the period from 29-5-92 to 28-5-93. He also deposed that the rider of the motor cycle, namely, T. Ravi was charge sheeted under Sections 279, 337 and 338 of the Indian Penal Code and Section 3 (1) of the Motor Vehicles Act, read with Rule 177 of the Rules. Charge sheet has been marked as Ex. A-2. He also deposed that the said Ravi was not having a valid licence to drive motor cycle and that the said Ravi, after accepting the guilt, paid the fine amount. He further deposed that their insurance company had sent a registered notice on 9-7-1992 to M/s. Lakshmi Timber Traders as well as to the said T. Ravi for production of R.C. Book and driving licence stood in the name of the said T. Ravi. The said copy has been marked as Ex. B-4. The acknowledgment cards have been marked as Exs. B-5 and B-6. According to them, neither the owner nor the rider Ravi sent any reply, nor produced the R.C. book and driving licence. R.W.3, partner of M/s, Lakshmi Timber Traders deposed before the Court that they had sold the motor cycle to D. Balan under Ex.B-7 on 8-7-92. The evidence of R.Ws.1 and 2 would show that on the date of the accident i.e., 17-8-92, the motor cycle stood in the name of M/s. Lakshmi Timber Traders, Trichy, 2nd respondent herein and the person who drove the motor cycle on the date of the accident was not having a valid licence to drive the same. The insurance company not only raised the plea that the rider was not having a valid licence, but also examined an Assistant from the Office of the Regional Transport Officer, Trichy as well as their own officer as R.Ws.1 and 2 respectively, and also established that they had sent notices to 2nd respondent herein and the said Ravi, calling upon them to produce R.C. book and driving licence as evidenced from Exs. B-4 to B-6. The act of the 2nd respondent herein in not sending any reply to their notice and not producing the driving licence before the Tribunal shows that the insurance company had discharged their initial burden. The contrary conclusion arrived at by the Tribunal cannot be accepted. However, as seen from Ex. B-13, the motor cyclist who drove the vehicle and caused the accident has no valid licence on the date of the accident. In such a circumstance, as observed by the Supreme Court in NEW INDIA ASSURANCE COMPANY, SHIMLA v. KAMLA AND OTHERS, reported in 2001-3-L.W.421, when a valid policy had been issued, the burden on the insurer to pay t hird parties whether or not there has been any breach or violation of the policy conditions. However, the amount payable by them to third party can be recovered from the insured by filing execution petition before the Tribunal. Inasmuch as the appellant insurance company has established and discharged its initial burden that the driver/rider of the motor cycle was not having a valid licence, in the light of the law laid down by the Apex Court, at the first instance, they are liable to pay compensation to the claimant, first respondent herein as awarded by the Tribunal and they are entitled to recover the same from the insured by filing necessary execution petition before the Tribunal.

6. As regards the second contention raised by M/s Lakshmi Timber Traders, 2nd

respondent herein, first of all they have not preferred appeal against the award/finding of the Tribunal. Though it is stated that they had sold the vehicle in favour of one Balan on 8-7-92 itself, as rightly observed by the Tribunal, the same has not been substantiated. Even with regard to the other stand that again the vehicle was transferred in the name of one Ravi, son of Dhanapal on 7-9-92, as seen from Ex.B-1 R.C.Book, admittedly, the accident occurred on 17-8-92, hence even the said transfer cannot absolve them from their liability. The liability of the transferor and the transferee with reference to the various provisions of the Motor Vehicles Act and the Tamil Nadu Motor Vehicle Accident Claims Tribunal Rules, 19 88 has been considered by a Division Bench of this Court (P. Sathasivam and K. Gnanaprakasam, JJ) in C.M.A.No.81/2002 dated 13-12-2002. Section 50 of the Motor Vehicles Act, 1988 speaks about transfer of ownership. It also provides certain conditions to be fulfilled both by the transferor and the transferee by filing Form 29 before the Registering Authority within the time prescribed. After considering those provisions and also various decisions of the other High Courts as well as the Apex Court, the Division Bench has held that there can be transfer of title by payment consideration and delivery of vehicle. It is further held that the transferor will continue to remain liable to third parties as his name continued in the records of the Office of the Regional Transport Officer as owner. It is clear from the said decision that on payment of consideration and delivery of vehicle, the title passes on, however, the transferor is still continued to remain liable to third parties, as his name continued in the records of the Office of the Regional Transport Officer as owner. It is also clear that so long as necessary corrections are made in the R.C.Book by the competent registering authority in so far as third parties are concerned, the transferor still continued to remain liable as his name still continued in the records of the Office of the Regional Transport Officer as owner. In the light of the statutory provisions of the Rules applicable, we are in respectful agreement with the said view. In the present case, the plea that M/s. Lakshmi Timber Traders sold the vehicle in favour of one Balan on 8-7-92 has not been substantiated by placing acceptable evidence such as application in the prescribed form to the concerned Regional Transport Officer and endorsement made in the Registration Certificate. Likewise, the other plea that the vehicle was again transferred in the name of one Ravi on 7-9-92 is subsequent to the date of accident; hence it is unnecessary to refer the second sale which admittedly had taken place subsequent to the date of accident. In the light of our discussion and in the absence or proper compliance of the statutory provisions regarding transfer of ownership, we are unable to accept the second contention raised by the second respondent herein. Even otherwise, he cannot raise such contention in the absence of any appeal by them and in the appeal preferred by the Insurance Company.

7. In the light of what is stated above, we pass the following Order:

The appellant-Insurance Company is liable to pay the compensation to the claimant/first respondent herein as awarded by the Tribunal at the first instance, and they are entitled to recover the same from the insured by filing an execution petition before the Tribunal. In so far as the stand taken by the second respondent herein/M/s. Lakshmi Timber Traders, with reference to

the transfer of vehicle, in the light of our conclusion, we are not inclined to issue any direction. However, it is for them to agitate the same before the appropriate forum, if the same is permissible under law. Civil Miscellaneous Appeal is ordered accordingly. No costs.

R.B.
Index: Yes
Internet : Yes
To:-
1) The Motor Accidents Claims Tribunal (II Additional District Judge), Tiruchirapalli (with records).

2) The Section Officer, V.R Section, High Court, Madras.